LEGAL RIGHTS OF PERSONS WITH MENTAL ILLNESS WITH SPECIAL REFERENCE TO THE MENTAL HEALTHCARE ACT, 2017

SHORT SYNOPSIS

Submitted in partial fulfillment of the requirement of the degree of

DOCTOR OF PHILOSOPHY

by

Shagun Dhingra
MRULWDN012K220063

Under the supervision of

Dr Manisha Narula
Associate Professor

Department of Law
School of Law

MANAV RACHNA UNIVERSITY
Sector-43, Aravali Hills, Faridabad

Year 2024

MANAV RACHNA UNIVERSITY
Declared as State Private University vide Haryana Act 26 of 2014

MANAV RACHNA UNIVERSITY
Sector-43, Aravali Hills, Faridabad

Date: 26-09-2024

DECLARATION BY THE SCHOLAR

I hereby declare that the short synopsis entitled **LEGAL RIGHTS OF PERSONS WITH MENTAL ILLNESS WITH SPECIAL REFERENCE TO THE MENTAL HEALTHCARE ACT, 2017** being submitted in partial fulfillment of the requirement for the degree of Doctor of Philosophy in the Department of Law under the School of Law of Manav Rachna University, Faridabad during the academic year 2022-2023
It is the work that is expected to be carried out under the supervision of Dr Manisha Narula.

Further, it is declared that the short synopsis is within the plagiarism limit and copy of the same is attached as per the University norms.

Shagun Dhingra
Registration Number : MRULWDN012K220063

MANAV RACHNA UNIVERSITY
Declared as State Private University vide Haryana Act 26 of 2014

MANAV RACHNA UNIVERSITY
Sector-43, Aravali Hills, Faridabad

Date: 26-09-2024

CERTIFICATE BY SUPERVISOR(S)

This is to certify that, the short synopsis entitled **LEGAL RIGHTS OF PERSONS WITH MENTAL ILLNESS WITH SPECIAL REFERENCE TO THE MENTAL HEALTHCARE ACT, 2017** is an original piece of work done by research scholar Shagun Dhingra under the supervision of Dr Manisha Narula for the degree of Doctor of Philosophy in the Department of Law under the School of Law of Manav Rachna University, Faridabad during the academic year 2022-2023

Further, it is certified that the short synopsis is within the plagiarism limit and copy of the same is attached as per the University norms.

Signature of the Supervisor
Dr Manisha Narula
Associate Professor

ABSTRACT

Mental health remains an important issue relating to health of the public at large in India. According to the National Mental Health Survey (2015-16), nearly 150 million Indians, constituting approximately 10% of the population, are estimated to be in need of active mental health interventions. The enactment of the "Mental Healthcare Act, 2017", is a landmark development, providing a legal framework that lays emphasis on the rights of persons suffering from "mental illness" and advances accessible and dignified mental health care. This research aims to comprehensively examine the legal "Rights of persons with mental illness" in India, with a specific focus on the existing legal framework, its implementation, and its alignment with international human rights standards. The overarching goal of this research is to identify strengths, weaknesses, gaps, and challenges within the current legal landscape pertaining to mental health rights. By conducting this study, focus is on seeking to contribute to a deeper insight of the protection of their rights and the experiences of persons with "mental illness" in India. Overall, this research aims to bridge and close the divide between legal provisions and the actual experiences of persons with "mental illness", ultimately leading to improved legal protections, reduced stigma, increased accessibility of mental health services, and a more inclusive society that respects the rights of all individuals, regardless of their mental health status.

Key words: "Mental Illness", "Mental Healthcare Act, 2017", Disability Rights, Mental disability, Human Rights.

TABLE OF CONTENTS

S.No.	Description	Page No.
1	Introduction	1
	1.1 "Mental Illness" and Mental Health	
2	Historical Background: The Journey to "Mental Healthcare Act, 2017"	6
3	The Contemporary Landscape: Rights Under the "Mental Healthcare Act, 2017"	8
4	Constitutional Provisions	10
5	Legislative Framework for Persons with "mental illness"	11
6	Description of Broad Area	14
7	Significance of the Research	15
8	Review of Literature	16
9	Research Gaps	18
10	Research Methodology	18
11	Research Objectives	19
12	Research Questions	19
13	Hypothesis	20
14	Expected Outcome of the Research	20
15	Chapterization	21
16	Bibliography	22

1. Introduction

In the canvas of India's vibrant cultural and legal landscape, one of the most crucial yet often overlooked concerns is the well-being and rights of individuals with “mental illness”. “Mental illness”, a critical and multidimensional phenomenon has at length remained a challenge for societies across the globe. It’s deep and strong impact on families, communities and individuals demands deliberate and mindful consideration and an extensive and complete legislative framework and structure to protect and preserve the rights and integrity of those afflicted. It is a continuous global health concern that goes across timelines and geographical boundaries, affecting persons from all spheres and societies. In India, a country known by its rich culture and an increasingly growing healthcare scenario, the blow and consequence of mental illnesses have gained heightened recognition in recent years. The perception of mental health and the barriers linked with mental illnesses have been vital in forming public policy and healthcare initiatives.

Based on the latest accessible data, mental health remains a critical concern linked to health of the people in India. According to the National Mental Health Survey (2015-16), nearly 150 million Indians, constituting approximately 10% of the population, are estimated to be in need of active mental health interventions. The struggle of “mental illness” goes beyond mere statistics, affecting various aspects of peoples’ lives, including their ability to engage in meaningful work, sustain interpersonal relationships, and navigate the complexities of daily living. In this area, the evolving discourse surrounding mental health of persons in India has been accompanied by efforts to destigmatize mental illnesses, enhance public awareness, and establish a more robust infrastructure for mental health services. The enactment of the “Mental Healthcare Act, 2017”, is a landmark development, providing a legislative structure that lays priority on the rights of persons suffering from mental illnesses and advances accessible and dignified mental health care.

To start with, it is imperative to define “mental illness”. “Mental illness”, also called as mental disorder or psychiatric disorder, encompasses a wide array of conditions that influence an individual's thoughts, emotions, behaviours, and overall mental well-being. These conditions often appear in various forms, from mood disorders like depression and bipolar disorder to anxiety disorders, schizophrenia, and neurodevelopment disorders like autism. In accordance with World Health Organisation “A mental disorder is characterized

by a clinically significant disturbance in an individual's cognition, emotional regulation, or behaviour. It is usually associated with distress or impairment in important areas of functioning. There are many different types of mental disorders. Mental disorders may also be referred to as mental health conditions. The latter is a broader term covering mental disorders, psychosocial disabilities and (other) mental states associated with significant distress, impairment in functioning, or risk of self-harm." [1] "Mental illness" is not a mere matter of personal choice but a complex interplay of genetic, environmental, and psychological factors.

On the flip side, mental health includes as one's emotional wellness, psychological wellness, and social well-being. Mental health influences one's thoughts, emotions, and behaviours. It also controls how a person responds to stressful situations, interacts to others, and makes decisions. Every essential stage of life from early years and adolescence to adulthood and aging experiences the seriousness of mental wellbeing. The term mental health means complete wellbeing where each person can reach their full potential, manage daily stressors, work effectively and productively, and add to their society. It does not only refer to the absence of mental disorders.

According to National Mental Health Policy of India, "Mental Health is not just the absence of mental disorder. It is defined as a state of well-being in which the individuals realize their own abilities, can cope with the normal stresses of life, can work productively and fruitfully, and are able to make a positive contribution to their community. Mental Health refers to a broad array of activities directly or indirectly related to mental well-being. This is in keeping with World Health Organisation's definition of health".

Although phrases like "'"mental illness"," "mental disorder," "mental impairment," and "mental disability" are frequently used synonymously, there may be subtle variations between them relying on the scenario and matter being discussed. Hence it is crucial to understand the meaning and usage of each of the above terms.

> **"Mental illness":** Conditions affecting mental health are also known as "mental illness" under the general term. It includes a broad spectrum of conditions that impact mood, thought, and behaviour, causing suffering and making it more difficult to go about daily tasks. Mental diseases can be acute or long-term, and varying types of

[1]https://www.who.int/news-room/fact-sheets/detail/mental-disorders

care may be needed. In ordinary speech, this word is frequently used to characterise illnesses including schizophrenia, depression, and anxiety. It highlights the existence of a medical problem that has an effect on mental health.

The “Mental Healthcare Act, 2017” describes “mental illness” as a major disorder wherein a person’s way of thinking, comprehending situations which in turn affect his mood, , orientation and memory thereby impairing his judgment, behaviour and ability to identify reality or capacity to fulfil the ordinary requirements of life. It also includes conditions associated with mental well being of a person like the abuse and exploitation of alcohol as well as drugs, but excludes mental retardation, a condition of restricted or partial development of a person’s mind, also characterized by intellectual disability.

According to “National Mental Health Policy of India”, “mental illness” is best described as specific conditions including Schizophrenia, Depression, Bipolar Disorder and Obsessive Compulsive Disorder

Mental Disorder: “Mental illness” and "mental disorder" are frequently used interchangeably. It describes a behavioural or psychological condition or pattern that is clinically significant and manifests in a person. It is usually linked to anguish, impairment, or a higher chance of experiencing hardship, mortality, agony, or a severe loss of liberty. Mental disorders are frequently used to classify and characterise certain illnesses listed in diagnostic manuals namely the DSM-5 (Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition) in a clinical or diagnostic setting. It highlights symptoms that fit particular diagnostic requirements. A mental disorder in a person refers to a clinically relevant disruption in the cognition, regulation of emotions, or behaviour of a person. It is usually observed in instances where there is distress or incapacity in crucial areas important for functioning of a human mind. There are many different types of mental disorders. Mental disorders may also be referred to as mental health conditions. The latter is a

broader term covering mental disorders, psychosocial disabilities and (other) mental issues linked with crucial distress, incapacity in functioning, or threat of self-harm.[2]

As per the American Heritage Stedman's Medical Dictionary, a mental disorder means a disturbance of the normal physical or mental health of the mind. Mental disorders are an outdated term that dates back to prior understandings of mental health. In earlier studies, it was believed that mental disorders only impacted the mind, but today the medical community understands that mental disorders influence the mind, body, and also the brain and overall functioning of the individual. Today, "mental illness" is used more widely to describe a person's mental wellbeing.[3]

Mental Impairment: Mental impairment means an occurrence in which the mental functioning of a person is reduced or limited. This can include cognitive abilities, emotional regulation, and social skills. The term is mostly used in legal or disability contexts to describe the influence of a mental health infirmity on a person's ability to perform certain duties, jobs or activities. Mental impairment may be used in legal debates or conversations related to disability claims, workplace accommodations, or other situations where the focal point is on functional limitations rather than particular diagnostic criteria.

Mental Retardation: "Mental retardation" is where there is sub average intellectual functioning which incapacitates a person to be socially adept. It is a situation in which the person has a below average I.Q level due to which he faces difficulties in coping up with realities of daily life. The same is generally diagnosed in one's formative years. Mental retardation is incomplete mental development. Mentally retarded persons are those whose normal intellectual growth had stopped or did not continue developing at some time before birth, during the birth process, or in the early years of development.[4] However, in recent years, there has been a shift towards using the term

[2] https://www.who.int/news-room/fact-sheets/detail/mental-disorders
[3] https://mpwhealth.com/mental-illness-vs-mental-disorder/ Accessed on 10th May, 2024
[4] Javaid Ahmed Mir, ""mental illness" vs Mental Retardation" KERF

"intellectual disability" instead of "mental retardation" due to concerns about stigma and negative associations with the latter term.

Mental Disability/Intellectual Disability: Mental disability is a term that is often used in legal and political contexts to give description of conditions that impact mental functioning and may affect an individual's ability to carry out specific jobs or participate completely in society. It is a broader term that may include both intellectual and mental health disabilities.

According to “National Mental Health Policy of India”, Mental Disability is best described as any disability linked to “mental illness”. While medical illness can be considered as a medical construct, disability is best explained with the help of a medico-social framework and both the above terms are not used synonymously in the document. Not everyone with “mental illness” will face disability, but many can undergo it because of the numerous obstacles that obstruct one’s complete and effective involvement in society at par with others.

An intellectual disability implies to a person who faces complications in coping with activities like learning, analysing and processing data or information and lacks the skill of solving issues and problems. The person with intellectual disability may encounter challenges in communicating with others, lacking skills to be socially adept as well as generic skills required for living. Intellectual disability generally exists at the outset of birth and is noticed or seen before adulthood. The condition is permanent which is not a disease or illness. Intellectual disability cannot be treated with medicines or cured through counselling or any other means. It is a condition of the mind. It is examined by a Psychologist whereas a psychiatric is the one who diagnosis “mental illness”. It is also not uncommon for a person battling intellectual disability to be suffering from a “mental illness” in which case the illness will be managed with the prescribed medication and/or support. By providing the adequate assistance and support, a person battling intellectual disabilities can develop a skill set

making him competent and capable enough with specific life skills to adapt and participate in their community[5].

These terms maybe interrelated or used interchangeably but they are used in different context and have different meanings. “Mental illness” is used in medical and clinical settings. It is also used in public health and healthcare communications to focus on conditions that affect mental health and which require any kind of treatment or medication. It is also used in personal and familial context. “Mental Disorder” is used in academic and professional settings and also in psychological fields. It is a technical term used in diagnostic manual like DSM – 5. On the flip side, mental disability can be referred in legal and disability law, educational and employment settings.

When deliberating over the “Rights of persons with mental illness” in the country and analysing the “Mental Healthcare Act, 2017”, it is suitable to use the term “mental illness” and consider the legal framework furnished by Mental Healthcare Act. This is because of the verity that the “Mental Healthcare Act, 2017”, particularly addresses issues tied to mental health as well as “mental illness”, and it is the prime legislation in India that is the focal point on the rights and adequate assistance along with care of individuals battling mental health conditions.

2. Historical Background: The Journey to “Mental Healthcare Act, 2017”

India's journey to the comprehensive “Mental Healthcare Act, 2017”, was marked by several legislative initiatives, each assisting in the gradual progress of mental health care and the acknowledgment of the rights of the persons suffering from some “mental illness”. Key milestones along this path included the **“Indian Lunacy Act of 1912” and the “Mental Health Act of 1987”**, which represented significant shifts in the legal framework governing mental health.

“The Indian Lunacy Act, 1912”

“The Indian Lunacy Act, 1912” was a significant piece of legislation aimed at addressing “mental illness” in Colonial India. The Act initiated means for the treatment and looked after

[5]https://www.camphill.org.za/articles/what-are-the-differences-between-intellectual-disability-and-mental-illness Accessed on 2nd May, 2024

custody of persons with “mental illness” but faced many challenges that presented a big question on its effectiveness. One of the main problems was that the Act gave lot of importance to on custodial care of individuals and lacked a rights based approach. It focused on confinement and isolation of those persons under very bad conditions without paying any attention to their human rights or needs. Furthermore, the act did not focus on the comprehensive framework for mental health and it followed obsolete concepts of “lunacy”. Therefore, it completely failed to present the broader social stigma attached to “mental illness” and did not take any initiative in the direction of community based mental health services.

The “Indian Lunacy Act, 1912” which in essence was the first and foremost law that was brought into effect to address mental health in the country. The law affected a fundamental change in the administration and functioning of asylums, which were subsequently called mental hospitals. Furthermore, the said law aimed to protect the public from the individuals who were labelled as being dangerous to the society as a whole (i.e. patients battling “mental illness”). However, the provisions of ILA, 1912 proved to be inadequate as it focused more on custodial sentences and did not give any recognition to human rights. Therefore, according to the Indian Psychiatric Society, the ILA, 1912 was deemed to be inadequate and inappropriate and thereby formulated a draft of a bill relating to mental health in 1950.

“Mental Health Act, 1987”

It took more than three decades for this bill to receive the President’s assent (in the month of May 1987); it was finally notified and implemented as an act in the year 1993. The major positive of the “Mental Health Act, 1987” was that it described “mental illness” in a manner which was progressive and placed due emphasis on assistance, care as well as treatment instead of custody. It law down comprehensive and detailed procedures for admission in hospitals under specific circumstances and focused on the need to protect rights of persons battling mental illness and their guardianship.

The “Mental Health Act,1987” was another attempt to regulate mental health services and preserve the “Rights of persons with mental illness” in India. The Act had too much emphasis on the creation and regulation of mental hospitals. Even though it did try to resolve issues such as treatment and custody of individuals with “mental illness”, it did not provide a holistic approach to mental healthcare. Furthermore, the said law was not completely in in

line with the provisions International Human Rights Standard, specifically with issues like involuntary admission. “Mental Health Act, 1987” was also criticised for not protecting patient’s rights, autonomy and dignity and this further lead to a need for a comprehensive reform in the mental healthcare system in the country. The criticisms of the “Mental Health Act, 1987” are majorly linked to the legal procedures of admission, licensing and guardianship. Furthermore, rights of individuals battling mental illness and deliver of mental healthcare services were inadequately recognised in this Act. A number of activists working on human rights have probed about the constitutional validity of the “Mental Health Act, 1987” as it had put restrictions on personal liberty of persons battling mental illness without review by any judicial body. The “Mental Health Act, 1987” also did not address the follow-up care, rehabilitation as well as attending to patients once they were discharged from the medical facility or hospital.

The “Mental Healthcare Act, 2017”, was a watershed moment in India's method for addressing mental health. Enforced to rectify the shortcomings of earlier legislation and align with international human rights standards, this act marked a substantial deviation from the custodial approach that characterized previous laws. The rights of individuals along with the autonomy of beings with “mental illness” were given priority, emphasized the importance of informed consent, and sought to decriminalize suicide, recognizing it as a cry for help rather than a criminal act. The legislation also created boards for Mental Health Review, whose duties include examining and overseeing the care as well as treatment provided to people battling mental illnesses.

3. The Contemporary Landscape: Rights Under the “Mental Healthcare Act, 2017”

India is making strides in recognizing the relevance of promoting the rights of individuals living with “mental illness” through the “Mental Healthcare Act, 2017”, and subsequent developments. A rights-based strategy to provide access to mental health is gradually gaining prominence. The “Rights of persons with mental illness” are intertwined with the broader tapestry of human rights, equality, and social justice, and the “Mental Healthcare Act, 2017”, represents a monumental step towards their realization. This research aims to unravel the

intricate threads of this framework, examining its strengths, weaknesses, and the promise it holds for a more inclusive and compassionate society.

Under the “Mental Healthcare Act, 2017”, all individuals have the right to avail mental healthcare and care from government run facilities and assistance. On account of this, a patient suffering from “mental illness” will gain access to resources and services like: free delivery of necessary psychotropic drugs; insurance coverage for mental health issues; and financing for private consultations in the event that a district mental health facility is not accessible. The MHCA 2017 also guarantees that patients' rights and dignity, including those from low-income socioeconomic backgrounds, would be respected and that care and recovery will be provided in the minimum restrictive setting possible. These ideas will have the effect of significantly reducing the financial and psychosocial burdens placed on carers. Refined directives along with nominated representatives are two new ideas introduced by the MHCA 2017 that give people with mental illnesses more control over how they want to be looked after in the occurrence of an event that may deprive them of mental capacity, or the ability to take prudent decisions and also to decide who will be their nominated representative. The said Act directs the creation of mental health agencies, both at the state and central level. Additionally, each mental health facility must register with the appropriate state or central mental health authority. Also, periodically reviewing the application and process for issuing advance directives, a body constituted for commissioning mental health review will serve as a quasi-judicial independent body that counsels the government on the preservation of the “Rights of persons with mental illness”.

Certain apprehensions are present about the new act which mainly pertain to the new Act being too ambitious, unattainable and unrealistic, considering the current situation of infrastructure, present staff and available resources which in the view of many is lacking, and as a result of which will be unable to deliver the proposed. For effective adoption, the current system must be significantly altered, and staff and finance personnel must be heavily involved. The MHA 2017 has some gaps that call into question its relevance and usefulness for the Indian populace. Some specialists are concerned that decision-making, treatment alternatives, and admission processes would become more formalised and bureaucratized that the bill is likely to make people more stigmatised and unwillingness to seek out mental health therapy experts, as a result of cultural, educational, and sociological elements, especially in

India's rural areas. However, at concurrently, the updated law may indicate a new chapter in the history of anti-stigma initiatives; it might result in a larger distribution of resources available for mental health, along with instruction and maintenance of mental health specialists, such as psychiatric nurses, psychiatrists, and other related occupations.

4. Constitutional Provisions

The Indian Constitution, while not explicitly addressing "mental illness" contains several provisions that indirectly pertain to their rights and well-being. These provisions are rooted in the principles of equality, non-discrimination, and the preservation and advancement of fundamental rights. Here are some key provisions in the Indian Constitution relevant to the protection of the "Rights of persons with "mental illness":

- **Right to Equality (Article 14):** Article 14 notified in the Constitution ensures the availability of right to equality before the law to every citizen and equal protection of the laws to all persons. This article aims to make certain that persons with "mental illness" are not subjected to discrimination solely based on their mental health status[6].
- **Right to Life and Personal Liberty (Article 21):** Article 21 ensures the right to life and personal liberty to all person, including those with "mental illness". It implies that individuals with "mental illnesses" have the right to live with dignity and be protected from inhumane or degrading treatment.
- **Right to Non-Discrimination (Article 15):** Article 15 prohibits discrimination on various grounds, including religion, race, caste, sex, or place of birth. While "mental illness" is not explicitly mentioned, this provision can be interpreted to include protection against discrimination based on mental health status.
- **Right to Education (Article 21A):** Article 21A, known as the Right to Education, guarantees free as well as compulsory education to all children comprising of the age group of 6-14 years. This includes children with "mental illness", ensuring their access to education.

[6] The Constitution of India, art. 14

- **Directive Principles of State Policy (Article 41):** Article 41 of the Directive Principles of State Policy emphasizes the importance of public assistance and welfare for individuals who are unable to secure their livelihood due to infirmity, sickness, or disability. This provision can be interpreted as promoting the welfare of persons with "mental illness".
- **Right to Health (Article 47):** Article 47 directs the state to raise the level of nutrition and the standard of living and to improve public health. While not specific to mental health, this provision underscores the importance of the state's responsibility in addressing health-related issues, including mental health.
- **Protection of Personal Data (Article 21A):** While India does not have a specific data protection law, the right to privacy has been recognized as a fundamental right under Article 21. This has implications for the purpose of protection of personal information, including medical and mental health records.

5. Legislative Framework for Persons with "mental illness"

The "Rights of Persons with Disabilities Act, 2016"

The "Rights of Persons with Disabilities Act, 2016" is a comprehensive legislation in India that aims to protect and ensure that persons who have disabilities including those with "mental illnesses" and mental disabilities[7] have equal rights as others. The act recognizes the unique challenges faced by individuals with "mental illnesses" and disabilities and aims to ensure that they are fully included in the society with adequate participation.

The act talks about "persons with disability" and accounts for persons who have intellectual, psycho-social and multiple disabilities. It takes into perspective people with mental illnesses and mental disorders. It focuses on the fact that any person with disability has the full legal capacity and rights to take his own decisions to the greatest extent possible. The act has also granted the appointment of limited guardianship and full guardianship whenever deemed

[7] The "Rights of Persons with Disabilities Act, 2016"

necessary to uphold the interest of persons with disability including those with mental disabilities. The act has also promoted and encouraged inclusive education for children with disabilities.

The act has also taken into recognition the essentiality of employment opportunities and has provided the same to persons with disabilities including those suffering from mental disabilities. The employers have also been asked to offer lodgings to such persons to work peacefully. The act has also focused on the significance of offering healthcare facilities for persons with disabilities including "mental illness".

Since exploitation, abuse and neglect of persons with "mental illness" is so prevalent, the act has provisions which talk about preventing the same. It has also setup system for checking instances of the abuse. People with disabilities have means to the justice system on an equal footing with others is also one of the main aims of the said act. The act recognizes the rights of parents, caregivers, and legal guardians of persons with disabilities and mandates that their rights and interests are considered in decision-making processes[8].

The Code of Criminal Procedure, 1973

In the Indian legal system, the term "legal unsoundness" is generally associated with the mental state of a person and its consequence on their criminal responsibility. The Code of Criminal Procedure (CrPC) contains provisions related to the examination of the accused's mental condition and the procedure that is to be followed while interacting with the persons who may be of unsound mind. The primary sections in the Criminal Procedure Code, 1973 that address this issue are from **Section 328 to 339.**

These sections ensure that individuals who are of unsound mind are treated with the appropriate legal procedures, and their mental condition is factored in during criminal proceedings. The Criminal Procedure Code, 1973 provides mechanisms for assessing as well as attending the mental condition of accused persons to ensure fair and just legal processes.

Indian Penal Code, 1860

The Indian Penal Code deals with cases where a person is alleged to have committed a criminal act but claims to have done so when they were of unsound mind. **Section 84** states

[8] ibid

that a person who was of unsound mind at the time of committing an offense shall be exempt from criminal liability, provided they must have been incapable of knowing the nature of the act they were doing or that it was wrong or contrary to the law and the burden of proving the unsoundness of mind and the requirements for exemption lies on the accused.

The Code of Civil Procedure, 1908

The Code of Civil Procedure (CPC) primarily deals with civil matters and civil litigation, rather than criminal cases involving mental unsoundness. However, Code of Civil Procedure has few sections which can be useful in civil cases where soundness of mind is talked about. They are not in direct relation to legal or mental unsoundness of mind but mention such issues like the appointment of a guardian for a person of unsound mind. **Order 32 talks about Suits by or Against Minors and Persons of Unsound Mind**. It has laid down the procedures for suits filed by or against minors, persons of unsound mind, and other individuals lacking full legal capacity. It outlines the rules for appointing guardians ad litem, the duties and responsibilities of such guardians, and the court's role in protecting the interests of the party lacking capacity[9].

While the main focus of Code of Civil Procedure are civil suits, these provisions fulfil an essential role in ensuring that persons who are not mentally of sound mind have an option to be represented by guardians who can protect their interests and rights. These provisions therefore further the integrity and fairness of civil suits wherein the parties have legal or mental capacity issues.

Indian Evidence Act, 1872

The Indian Evidence Act, 1872 comprises provisions which talk about the competency of witnesses, including witnesses who may be of unsound mind. **Section 118 talks about Persons competent to testify.** This section says that the general rule is that all persons are competent to testify until and unless they are expressly declared incompetent by any law. Therefore, persons who have an unsound mind can still testify based on the situation and circumstances and as long as they're able to understand the facts and can communicate[10].

[9] Code of Civil Procedure, 1908, Order 32
[10] Indian Evidence Act, 1872 s118

Section 119 talks about Witnesses unable to communicate verbally. It grants permission to the witnesses who are not able to communicate verbally to give evidence by any other way such as through writing or by using sign language. It is useful for witnesses who have any kind of mental or communication disabilities[11]. Next is Section 45 which talks about expert opinions, taking into account those of psychiatrist or psychologist. Their opinions can also be admitted as evidence to establish the mental state or unsoundness of mind of any person.

Indian Contract Act, 1872

The Indian Contract also has a few provisions which talk about persons with unsound mind. Section 6(4) of the Act states that a proposal is revoked by death or insanity of the proposer, if the fact comes to the knowledge of the acceptor before acceptance.[12]Section 11 of the Act states that every person is competent to contract who is of the age of majority according to the law to which he is subject and who is of sound mind and is not disqualified from contracting by any law to which he is subject.

According to the section 12 of the Act, whenever a person enters into a contract and at that particular time is able to understand the terms and conditions of the said contract and is able to form a rational judgement of its consequences, he is said to be of sound mind. The said person cannot enter into a contract during a period wherein he is of unsound mind and can do so only when he is of sound mind.

6. Description of broad area

Rights related to "mental illness" in India constitute a complex and multifaceted area of study, intertwining legal, social, and healthcare dimensions. The recognition and protection of the rights of individuals battling "mental illness" are fundamental to fostering an inclusive and equitable society. The "Rights of Persons with Disabilities Act, 2016", and the "Mental Healthcare Act, 2017", form the keystone of legal safeguards for individuals grappling with "mental illness" and disabilities. However, the effective implementation of these legislations and the translation of legal provisions into tangible rights and protections present intricate challenges.

[11] Indian Evidence Act, 1872
[12] Section 6(4), Indian Contract Act, 1872

In addition, an evaluative analysis with international human rights standards, particularly the "United Nations Convention on the Rights of Persons with Disabilities" (UNCRPD), offers valuable insights into India's alignment with global norms and areas where divergence exists. By examining the entirety of the legal and societal framework, this research aspires to provide a nuanced understanding of the "Rights of persons with mental illness" in India, offering recommendations for both policy enhancements and societal transformation. The major aim is to aide to a more inclusive, equitable and rights based approach to "mental illness" in the country.

7. Significance of the research

Research on the rights of individuals with "mental illness" in India holds immense significance in the quest of a just and inclusive society. It is an imperative action which is deeply rooted in the fundamental principles of equality, human rights, liberty and dignity. "mental illness" is often accompanied by stigma, discrimination and isolation. Therefore, understanding and protecting the rights of such persons and the battles they undergo in the society is utmost needed so that policies and programs can be better formulated to establish their social inclusion. Evaluating the effectiveness of mental health programs and figuring out areas which need improvements are required to affirm that persons with "mental illness" are properly cared for.

By conducting research in this area, it can be ensured that such individuals are not in the back foot of society but are given equal fundamental rights and respect as other citizens. Such research will highlight the struggles they face from stigma and discrimination to limited access to healthcare, employment opportunities and education. Furthermore, research in this area would help policymakers, lawyers and advocacy groups, judges with the relevant data and information needed to draft effective laws, policies and programs and formulate an encouraging environment that empowers persons with "mental illness" to lead fulfilling lives Conducting research on the "Rights of persons with mental illness" in India holds profound significance in addressing systemic challenges and ensuring the well-being and inclusion of this vulnerable population. Understanding the legal landscape of this area further helps in assessing the efficiency and effectiveness of the current legislations, policies and programs in advancing protection and support to this vulnerable group. Moreover, research in this area

shall contribute to the broader discussion on human rights highlighting that person's dignity and rights as contemporaries. Furthermore, by conducting research in the sphere and diving deep into societal practices, attitudes and perception of society will give a broad picture of initiatives focused on decreasing stigma and discrimination around "mental illness" and mental health. Also, most importantly, a research in this area will throw light on quality of mental health services in the country and how far is it accessible to the common man. By assessing the multi dimensionality of "mental illnesses" with other issues such as socio-economic status, caste, gender, research in this dives into a deep understanding of the struggles faced by varied populations.

Additionally, it assists the analysis of International Standards and best practices allowing for an in depth study that can suggest improvements in the mental health policy of the country. In engaging persons who deal with "mental illness" in the research process, their perceptions, opinions and experiences are regarded and appreciated, contributing to empowerment and self advocacy which in turn is a crucial step towards ensuring a society that respects, honours, protects and supports people with "mental illness".

8. Review of Literature

Books

In their book titled, **"India's Mental Healthcare Act, 2017, Building Laws, Protecting Rights", the authors Richard M. Duffy, Brendan D. Kelly** have given a extensive review of the Mental Healthcare Act of 2017. The book contains 11 chapters and is of help for anyone who is using the said act in a professional role. It has also taken into perspective the various implementation issues which come up with the Act such as creation of state and central mental health review boards. The book has also covered "Rights of Persons with Disabilities Act, 2016" and the international framework such as "United Nations Convention on the Rights of Persons with Disabilities" but nowhere the book has covered various other legislations which talk about the "Rights of persons with "mental illness"" like IPC, CrPC, and Evidence Act etc.

In the book titled, **"Law of Disability", by S.P. Singh Parmar and Shreya S. Desai** important concepts related to disability have been dealt with such as mental disorder,

insanity, psychotic disorder, lunacy etc. A difference has also been chartered out between medical insanity and legal insanity but since the book was published in the year 2004, there is no mention of the "Mental Healthcare Act, 2017".

In the book titled **"Disability and the Law: Human Rights Law Network India" by Shruti Pandey, Priyanka Chirimar and Deepika D'Souza,** various concepts around disability have been discussed along with a number of judicial precedents. The book contains 9 chapters. Chapter 7 deals with the topic of "mental illness" and mental health. The rights of mentally ill individuals have also been discussed with the help of case laws. Some provisions of "The Mental Health Act, 1987" have also been discussed but since the book was published in the year 2005, there is no mention of the "Mental Healthcare Act, 2017".

Articles

In the article titled **"Mental Healthcare Act 2017 – Aspiration to action" by Suresh Bada Math, Vinay Basavaraju, Shashidhara Nagabhushana Harihara, Guru S. Gowda, Narayana Manjunatha, Channaveerachari Naveen Kumar, and Mahesh Gowda** effort has been taken to analyse and bring forth the "rights of the persons with mental illness". The article has also highlighted the weaknesses pertaining to the Act such as the Act focuses only on the "rights of the persons with mental illness" during their treatments in the hospitals but it does not talk about the rights and safeguards for the persons when living in the social community. The article has tried to bring forth the challenges and weaknesses of the law and has also tried to fetch some alternatives for the same.

In the article titled **"The rights of persons with Disability Bill, 2014: How "enabling" is it for persons with "mental illness"?" By Gundugurti Prasad Rao, Vemulokonda Sri Ramya and Math Suresh Bada,** the authors have discussed the weaknesses in Right of Persons with Disabilities Bill, 2014 now "Rights of Persons with Disabilities Act, 2016" from the perspective of view of mentally disabled individuals. Also to the necessity to synchronise the Rights of persons with disabilities bill (now Act) with the Mental Healthcare bill 2014, now "Mental Healthcare Act, 2017" has been highlighted.

In the article titled **"Mental Health Care Bill, 2016: A boon or bane?" by Gundugurti Prasad Rao, Suresh Bada Math, M. S. V. K. Raju, Gautam Saha, Mukesh Jagiwala, Rajesh Sagar, and T. S. Sathyanarayana Rao,** the authors have discussed the pros and cons of the bill now known as the "Mental Healthcare Act, 2017". Various positive aspects

of the Act have been discussed such as decriminalization of suicide, provision of medical insurance for the person with “mental illness”. Also various challenges of the Act have been discussed such as the issues with advance directive, implementation of Mental Health Review Boards etc.

9. Research Gaps

Majority of the studies that have taken place in this area are from medical, clinical and psychiatry perspectives and not from legal stand point. There is limited empirical research evaluating the effectiveness of the “Mental Healthcare Act, 2017” in protecting the “Rights of persons with mental illness”. Insufficient attention has been given to the implementation challenges and weak execution of the rights given to the persons suffering from “mental illness” in India. There is a lack of a complete comprehensive legal analysis which takes into account the preceding and current legislations as well as the International framework. And lastly there is little to no research on long term outcomes and follow up care.

10. Research Methodology

The two main categories of legal research methodology are the non-doctrinal, or empirical and the doctrinal method. It includes comprehensive review of relevant legal sources such as statutes, regulations, judicial precedents, legal treatises, law review articles, and other scholarly writings. These sources provide the foundation for analysing the legal framework surrounding the research question. Conversely, empirical research does not rely on theory; rather, it only uses experimentation and observation. Fieldwork for empirical research is conducted using questionnaires, surveys, or interviews.

- To complete this study primary method of research will be doctrinal in nature to critically analyze the existing legislative framework and constitutional principles and judicial decisions.

- Empirical method of research will also be conducted to find facts through interviews with Psychiatrists, Lawyers and Non-Governmental Organizations (NGOs) so as to take their opinions and suggestions.

- The primary and secondary sources of law will be used to collect data for the proposed study. For this study various international instruments, judicial precedents will also be taken into consideration.

11. Research Objectives

The research has the following objectives:

- To critically analyse the "Mental Healthcare Act, 2017", and other relevant provisions of different legislations pertaining to the "Rights of persons with mental illness" in India.
- To investigate the extent to which mental health laws are effectively implemented to protect the "Rights of persons with mental illness" and to identify challenges in translating legal provisions into practical safeguards.
- To compare mental health legislation in India with international human rights standards, including the "United Nations Convention on the Rights of Persons with Disabilities" (UNCRPD) and to identify areas where India's legislation aligns with or diverges from global norms.
- To suggest some measures that can be helpful in overcoming the challenges posed to the persons with "mental illness".

12. Research Questions

The research aims to answer the following questions:

- What is meant by the terms "Mental Health", "mental illness", "Mental Disorder", "Mental Disability" and "Mental Retardation"?
- What are the existing legal framework and policies in India concerning the "Rights of persons with mental illness"?

- How does the “Mental Healthcare Act, 2017” contribute to the legal framework for the protection of “Rights of persons with mental illness”?

- To what extent do the existing legal provisions in various other legislations safeguard the “Rights of persons with mental illness” in India?

- What are the challenges encountered during implementation of mental health laws in protecting the “Rights of persons with mental illness”?

- How does mental health legislation in India conform to the standards set by the “United Nations Convention on the Rights of Persons with Disabilities” (UNCRPD)?

13. Hypothesis

The contribution of the 2017 Act has not been sufficiently encouraging in advancing the “Rights of persons with mental illness” necessitating amendments in mental health laws to align with international standards for better protection of these rights.

14. Expected Outcome of the Research

This research aims to comprehensively examine the mental health “Rights of persons with mental illness” in India, with a specific emphasize on the existing legal framework, its implementation, and its conformity with international human rights standards. The overarching goal of the study is to identify strengths, weaknesses, gaps, and challenges within the current legal landscape pertaining to mental health rights. By conducting this study, focus is on seeking to aid a deeper insight of the protection of mental health rights and the encounters of individuals with “mental illness” in India. Overall, this research aims to bridge the gap between legal provisions and the actual experiences of such individuals, ultimately leading to improved legal protections, reduced stigma, increased access to mental health services, and a more inclusive society that respects the rights of all individuals, regardless of their mental health

15. Chapterization

Chapter 1 – Introduction

Chapter 2 – Historical Evolution: Journey to the “Mental Healthcare Act, 2017”

Chapter 3 – International Guidelines and Framework for Mental Health Issues

Chapter 4 – The Current Legal Landscape: Rights under the “Mental Healthcare Act, 2017”

Chapter 5 – Evaluating the Impact of the “Mental Healthcare Act, 2017”: An Empirical Approach

Chapter 6 – Conclusion and Suggestions

Bibliography

1. The Constitution of India
2. "Mental Healthcare Act, 2017"
3. The "Rights of Persons with Disabilities Act, 2016"
4. Indian Penal Code, 1860
5. The Code of Criminal Procedure, 1973
6. The Code of Civil Procedure, 1908
7. The Indian Evidence Act, 1872
8. The Indian Contract Act, 1872
9. Richard M. Duffy, Brendan D. Kelly, India's "Mental Healthcare Act, 2017", Building Laws, Protecting Rights.
10. Shruti Pandey, Priyanka Chirimar and Deepika D'Souza, Disability and the Law: Human Rights Law Network India
11. Muhammad Mudasir Firdosi and Zulkarnain Z. Ahmad, Mental health law in India: origins and proposed reforms
12. Antony, J. (2014) Mental Health Care Bill 2013: a disaster in the offing? Indian Journal of Psychiatry
13. National Mental Health Survey of India, 2015-16: Mental Health Systems
14. National Mental Health Policy of India, Ministry of Health and Family Welfare, Government of India, October 2014
15. J.K. Triveni, The Mental Health Legislation: An ongoing debate, Indian Journal of Psychiatry

A. Dhandha, Status Paper on the Rights of Persons Living with "mental illness" in Light of UNCRPD

MANAV RACHNA UNIVERSITY

Swami Vivekananda Library and Resource Centre
Manav Rachna University

SIMILARITY VERIFICATION CERTIFICATE

Title: LEGAL RIGHTS OF PERSONS WITH MENTAL ILLNESS WITH SPECIAL REFERENCE TO THE MENTAL HEALTHCARE ACT, 2017.

Researcher: SHAGUN DHINGRA

Registration Number: MRULWDN012K220063

Supervisor: DR. MANISHA NARULA

Department: SCHOOL OF LAW

This is to certify that the above mentioned Short Synopsis/Thesis was scanned for similarity index through DRILLBIT Software on 24:09:24 with submission ID 2345895 and the similarity index was found to be 6 %. The complete report running into 23 Pages, 7437 Word count with File Size 1504 KB is being forwarded to the Research Supervisor/DRC/DRB for review.

Swami Vivekananda Library and Resource Centre ★ Manav Rachna University ★ Faridabad
26/9/2024

Date: 26.09.2024

The complete report of the above Short Synopsis/Thesis has been reviewed and the similarity index is below the accepted norms as per the University Grants Commission (Promotion of Academic Integrity and Prevention of Plagiarism in Higher Educational Institutions) Regulations 2018. The Short Synopsis/Thesis may be considered for further processing

Shagun Dhingra
Research Scholar 26/09/24

Manisha
Research Supervisor 26/9/24

Swami Vivekanand Library and Resource Centre Campus
Manav Rachna University
26/9/2024

Manviela 26/09/24

Shagun Dhingra 26/09/2024

DrillBit

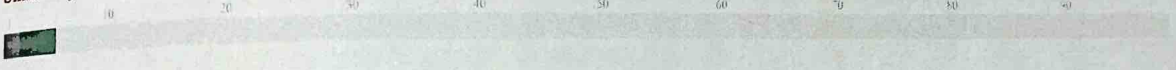
The Report is Generated by DrillBit Plagiarism Detection Software

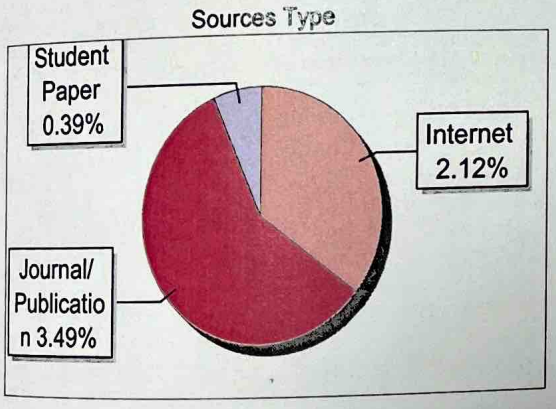
Submission Information

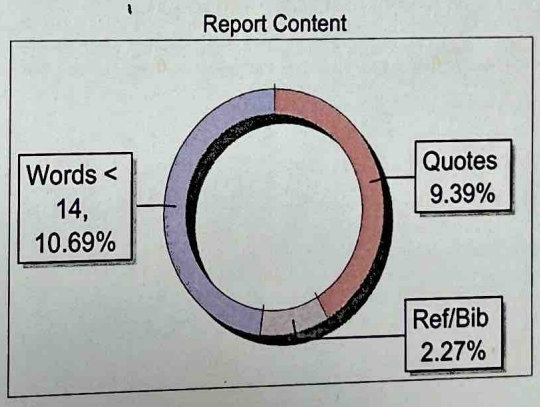
Author Name	Shagun Dhingra
Title	Legal Rights of persons with "mental illness" with Special Reference to the "Mental Healthcare Act, 2017"
Paper/Submission ID	2345895
Submitted by	yogeshkumarmalik.library@mru.edu.in
Submission Date	2024-09-24 14:36:19
Total Pages, Total Words	23, 7437
Document type	Synopsis

Result Information

Similarity **6 %**







Exclude Information

Quotes	Excluded
References/Bibliography	Excluded
Source: Excluded < 14 Words	Excluded
Excluded Source	**0 %**
Excluded Phrases	Not Excluded

Database Selection

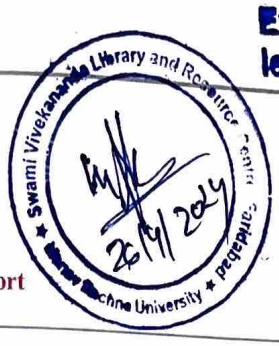
Language	English
Student Papers	Yes
Journals & publishers	Yes
Internet or Web	Yes
Institution Repository	Yes

A Unique QR Code use to View/Download/Share Pdf File

Excluding matches less than 14 words

Manuela 26/09/24

Shyam 26/09/24



DrillBit

DrillBit Similarity Report

6	20	A
SIMILARITY %	MATCHED SOURCES	GRADE

A-Satisfactory (0-10%)
B-Upgrade (11-40%)
C-Poor (41-60%)
D-Unacceptable (61-100%)

LOCATION	MATCHED DOMAIN	%	SOURCE TYPE
1	core.ac.uk	<1	Publication
2	eparlib.nic.in	1	Publication
3	dovepress.com	<1	Internet Data
4	REPOSITORY - Submitted to Magadh University, Bodh Gaya on 2023-10-30 20-31	<1	Student Paper
5	Accessibility of Central Government Buildings in Delhi by Ahluwalia-2012	<1	Publication
6	pdfcookie.com	<1	Internet Data
7	Thesis Submitted to Shodhganga Repository	<1	Publication
8	www.legalserviceindia.com	<1	Internet Data
9	www.mea.gov.in	<1	Publication
10	moam.info	<1	Internet Data
11	indiankanoon.org	<1	Internet Data
12	Thesis Submitted to Shodhganga Repository	<1	Publication
13	ddceutkal.ac.in	<1	Publication

Shagun Dudeja 26/09/24 Manisha 26/09/24

14	Rights of Person with Disabilities A Human Right Approach by Laddha-2016	<1	Publication
15	A Local Authority v JB 2020 Ewca Civ 735 And A Local Authority v AW 2020 Ewc by Pritchard-Jones-2020	<1	Publication
16	blog.scconline.com	<1	Internet Data
17	chapter.intach.org	<1	Publication
18	Criminal Responsibility in Canada Mental Disorder Stigma Education and the Insa by Yamamoto-2017	<1	Publication
19	journal.uniga.ac.id	<1	Internet Data
20	murac.org	<1	Publication

ABSTRACT

Mental health remains an important issue relating to health of the public at large in India. According to the National Mental Health Survey (2015-16), nearly 150 million Indians, constituting approximately 10% of the population, are estimated to be in need of active mental health interventions. The enactment of the "Mental Healthcare Act, 2017", is a landmark development, providing a legal framework that lays emphasis on the rights of persons suffering from "mental illness" and advances accessible and dignified mental health care. This research aims to comprehensively examine the legal "Rights of persons with mental illness" in India, with a specific focus on the existing legal framework, its implementation, and its alignment with international human rights standards. The overarching goal of this research is to identify strengths, weaknesses, gaps, and challenges within the current legal landscape pertaining to mental health rights. By conducting this study, focus is on seeking to contribute to a deeper insight of the protection of their rights and the experiences of persons with "mental illness" in India. Overall, this research aims to bridge and close the divide between legal provisions and the actual experiences of persons with "mental illness", ultimately leading to improved legal protections, reduced stigma, increased accessibility of mental health services, and a more inclusive society that respects the rights of all individuals, regardless of their mental health status.

Key words: "mental illness", "Mental Healthcare Act, 2017", Disability Rights, Mental disability, Human Rights.

Shagun Dhingra 26/09/24

Library and Resource Centre Faridabad Shanti Vihar Manav Rachna University 26/9/2024

DrillBit

The Report is Generated by DrillBit AI Content Detection Software

26/09/24

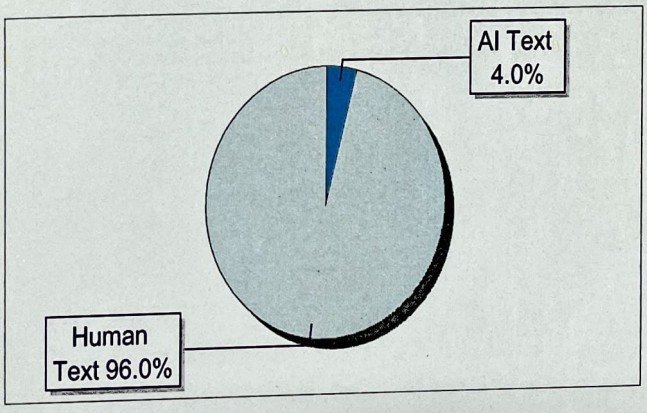
Submission Information

Author Name	Shagun Dhingra
Title	Legal Rights of persons with "mental illness" w..
Paper/Submission ID	2345895
Submitted By	yogeshkumarmalik.library@mru.edu.in
Submission Date	2024-09-24 14:36:19
Total Pages	23
Document type	Synopsis

Result Information

AI Text: **4 %**

Content Matched



Disclaimer:

* The content detection system employed here is powered by artificial intelligence (AI) technology.
* Its not always accurate and only help to author identify text that might be prepared by a AI tool.
* It is designed to assist in identifying & moderating content that may violate community guidelines/legal regulations, it may not be perfect.